APPEAL NO. 020150
FILED MARCH 7, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 8, 2002. The hearing officer resolved the issues before her by determining that the appellant's (claimant herein) _____, compensable injury does not extend to and include a torn medial meniscus of the left knee, and that the claimant did not have disability. The claimant appeals the hearing officer's determination that the compensable injury does not extend to and include a torn medial meniscus of the left knee, on sufficiency grounds. The claimant also argues that since the hearing officer's resolution of the disability issue was based upon her resolution of the extent-of-injury issue that the hearing officer erred in resolving the disability issue. The respondent (carrier herein) replied to the claimant's request for review urging affirmance.

DECISION

We affirm.

It is undisputed that the claimant sustained a compensable left knee injury on _____. At issue was whether this compensable injury extended to and included a torn medial meniscus of the left knee.

We have held that the question of the extent of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). The finder of fact may believe that the claimant has an injury, but disbelieve the claimant's testimony that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). We cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant did not meet her burden of proof. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar, *et al.* v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). We conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

According to information provided by carrier, the true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

MARVIN KELLY, EXECUTIVE DIRECTOR
T.P.C.I.G.A.
9120 BURNET ROAD
AUSTIN, TEXAS 78758.

Gary L. Kilgore
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

CONCURRING OPINION:

I concur that the decision is not reversible under our standard of review.

But two cautions are in order. Given that the legislature has recently reinforced its emphasis on return-to-work programs, our finders of fact should ensure that they are not penalizing those commendable workers who continue working and whose injuries are as a result not fully diagnosed until later. And, second, it appears that the agency may need to be more vigilant in granting interlocutory orders for medical tests and treatment to ensure prompt and proper diagnosis of injuries soon after they occur. As I read the medical evidence, the claimant's medial ligament was a source of concern early on in his injury and an MRI was recommended in the summer of 2000. There is an essential unfairness in telling a worker he has not made his case through medical evidence when early attempts to obtain proper testing were denied. The payment of benefits does not affect the carrier's right to continue to investigate or deny the claim within the first 60 days. Section 409.021(c).

Susan M. Kelley
Appeals Judge